REMARKS

The Examiner has restricted the claims into the following Groups:

Group I, claim(s) 1-6, 9-15, and 19 (each in part), drawn to polypeptides of SEQ ID NO:1, polynucleotides of SEQ ID NO:3, vectors, host cells, method of producing polypeptide, pharmaceutical composition comprising the polypeptide, and a method of treatment by administration of a pharmaceutical composition comprising the polypeptide.

Group II, claim(s) 7-8 (each in part), drawn to method of detecting the polynucleotide encoding SEQ ID NO:1.

Group III, claim(s) 16 in part, drawn to antibodies of SEQ ID NO:1.

Group IV, claim(s) 17 in part, drawn to an agonist of polypeptide of SEQ ID NO:1.

Group V, claim(s) 18 in part, drawn to an antagonist of polypeptide of SEQ ID NO: 1.

Group VI, claim(s) 20 in part, drawn to method of treatment by administration of antagonist of polypeptide of SEQ ID NO:1.

Group VII, claim(s) 1,2, and 15 (each in part), drawn to polypeptides and a pharmaceutical composition comprising the polypeptide of SEQ ID NO:2.

Group VIII, claim(s) 3-6, 12-14 (each in part), as they pertain to polynucleotides encoding the polypeptide of SEQ ID NO:2; and 9-11 (each in part), as they pertain to SEQ ID NO:4, drawn to polynucleotides, vectors, host cells, and method of producing the polypeptide.

Group IX, claim(s) 7-8 (each in part), in so far as they are drawn to method of detecting the polynucleotide encoding SEQ ID NO:2.

Group X, claim(s) 16 in part, drawn to an antibody which specifically binds to the polypeptide of SEQ ID NO:2.

Group XI, claim(s) 17 in part, drawn to an agonist of SEQ ID NO:2.

> Group XII, claim(s) 18 in part, drawn to an antagonist of SEQ ID NO:2.
>
> Group XIII, claim(s) 19 in part, drawn to a method of treatment by administration of a pharmaceutical composition comprising the polypeptide of SEQ ID NO:2.
>
> Group XIV, claim(s) 20 in part, drawn to method of treatment by administration of an antagonist of the polypeptide of SEQ ID NO:2.

Applicants provisionally elect, ***with traverse***, Group VIII, claims 3-6 and 12-14, as they relate to SEQ ID NO: 2, and claims 9-11, as they relate to SEQ ID NO: 4, for prosecution in the present application.

Applicants traverse the restriction requirement on the grounds that the search and examination of at least Groups VIII and VII (Group VII, claims 1, 2 and 15, drawn to polypeptides and a pharmaceutical composition comprising the polypeptide of SEQ ID NO: 2) is not unduly burdensome. According to MPEP section 803 "if a search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent and distinct inventions." As the polynucleotides of Group VIII encode the polypeptides of Group VII, Applicants suggest examination of at least Groups VIII and VII can be made without serious burden.

Applicants further traverse the restriction requirement because the unity of invention standard must be applied in national stage applications. Section 1850 of the Manual of Patent Examining Procedure (original 8th edition, published August, 2001) (hereinafter "MPEP") provides:

> ... [W]hen the Office considers international applications ... during the national stage as a Designated or Elected Office under 35 U.S.C. 371, PCT Rule 13.1 and 13.2 will be followed when considering unity of invention of claims of different categories without regard to the practice in national applications filed under 35 U.S.C. 111....
>
> In applying PCT Rule 13.2 to ... national stage applications under 35 U.S.C. 371, examiners should consider for unity of invention all the claims to different categories of invention in the application and permit retention in the same application for

> searching and/or preliminary examination, claims to the categories which meet the requirements of PCT Rule 13.2....

Id at page 1800-60 to -61.

MPEP section 1893.03(d) reiterates the Examiner's obligation to apply the Unity of Invention standard PCT Rule 13.2 instead of U.S. restriction/election of species practice:

> Examiners are reminded that unity of invention (not restriction) practice is applicable ... in national stage (filed under 35 U.S.C. 371) applications.

Id at page 1800-149, column 1.

Indeed, according to Example 17, Part 2 of Annex B to the PCT Administrative Instructions, the Examiner is obliged to find that "[T]he protein and the DNA sequence exhibit corresponding special technical features" and that, therefore, there is no lack of unity between claims directed to a protein "X" and the DNA sequence that encodes protein "X."

Thus, in the present case, unity of invention does exist at least as between claims 3-6, 12-14 and 9-11 and claims 1, 2 and 15, which cover the polypeptide depicted in SEQ ID NO. 2 and the DNA depicted in SEQ ID NO. 4, which encodes that polypeptide.

Therefore, Applicants respectfully request that the Examiner withdraw the Restriction Requirement at least as to claims 1, 2, 3-6, 9-11 and 12-15, and examine those claims in a single application.

CONCLUSION

The pending claims are in condition for allowance. An early notice to this effect is earnestly solicited. Should there be any questions concerning this application, Examiner Lockard is invited to contact the undersigned at the number listed below.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant(s) hereby petition(s) for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date 7/13/04

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